



OFFICE OF THE POLICE COMMISSIONER
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December 26, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Philip Fioranelli**
Tax Registry No. 934865
Police Service Area 7
Disciplinary Case No. 2011-6356

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on February 25, 2013, March 28, 2013, April 19, 2013, June 6, 2013, and July 10, 2013 and was charged with the following:

DISCIPLINARY CASE NO. 2011-6356

1. Said Police Officer Philip Fioranelli, assigned to the 102nd Precinct, while on-duty on or about November 23, 2011, inside the 102nd Precinct Stationhouse in Queens County, was discourteous to NYPD Deputy Inspector Armando DeLeon. (As amended)

P.G. 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT
GENERAL REGULATIONS**

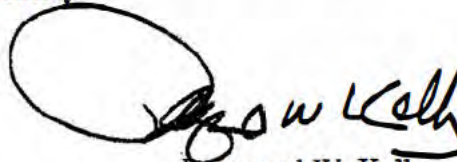
2. Said Police Officer Philip Fioranelli assigned to the 102nd Precinct while on-duty, on or about November 23, 2011, inside the 102nd Precinct Stationhouse, did fail and neglect to remain alert, to wit: said officer was observed reading a newspaper while on post.

P.G. 203-05, Page 1, Paragraph 1

**PERFORMANCE ON DUTY
GENERAL REGULATIONS**

In a Memorandum dated December 3, 2013, Assistant Deputy Commissioner David S. Weisel found Police Officer Philip Fioranelli Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 2011-6356. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of issues and circumstances in this matter and deem that a greater penalty is warranted. Therefore, the Respondent is to forfeit thirty (30) suspension days previously served, sixty (60) vacation days and be placed on a one year dismissal probation period, as a disciplinary penalty.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

December 3, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Philip Fioranelli
Tax Registry No. 934865
Police Service Area 7
Disciplinary Case No. 2011 6356

The above-named member of the Department appeared before the Court on February 25, March 28, April 19, June 6, and July 10, 2013, charged with the following:

1. Said Police Officer Philip Fioranelli, assigned to the 102nd Precinct, while on-duty on or about November 23, 2011, inside the 102nd Precinct Stationhouse in Queens County, was discourteous to NYPD Deputy Inspector Armando DeLeon. *(As amended)*

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT
GENERAL REGULATIONS

2. Said Police Officer Philip Fioranelli assigned to the 102nd Precinct while on-duty, on or about November 23, 2011, inside the 102nd Precinct Stationhouse, did fail and neglect to remain alert, to wit: said officer was observed reading a newspaper while on post.

P.G. 203-05, Page 1, Paragraph 1 – PERFORMANCE ON DUTY
GENERAL REGULATIONS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office.
Respondent was represented by Roger S. Blank, Esq.

Respondent pleaded Guilty to Specification No. 1 and testified in mitigation of the penalty. He pleaded Not Guilty to Specification No. 2. A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 2. Having pleaded Guilty to Specification No. 1, he is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Deputy Inspector Armando DeLeon, Captain Martin Briffa, Lieutenant Albert Alborano, Sergeant Michael Childs, Sergeant James McCann and Lieutenant Larry Jones as witnesses.

Deputy Inspector Armando DeLeon

DeLeon currently was assigned to Patrol Borough Queens South (PBQS) as an Impact/crime reduction supervisor. He previously was the commanding officer of the 102 Precinct. DeLeon testified that at around 1500 hours, he arrived at the command and walked into the station house. He observed Respondent sitting at the security post desk and made eye contact but Respondent was reading a newspaper. DeLeon asked Respondent to put the newspaper away, which he did. DeLeon then asked Lieutenant Albert Alborano, the desk officer, to pay attention to Respondent so that he did not do it again. He also asked Alborano to escort Respondent to his office to talk about "his conduct and what was expected of him."

DeLeon testified that "it's policy to call attention when a high-ranking member walks into the command," and although he had not insisted on rigorous adherence to this practice, he wanted "to make sure that he knew who I was when I walked in next time." DeLeon was bothered that Respondent "had looked at [him] and kind of dismissed [him]." DeLeon even had

asked some subordinates not to call attention to him, and he admitted that no one had been disciplined for failing to call attention, but, unlike Respondent, others would stop doing something they were not supposed to do when DeLeon walked in.

DeLeon testified that once in his office, Respondent immediately asked about the status of his transfer to Brooklyn. DeLeon testified that he might have signed the transfer request but did not know where it was in the process. Respondent then said "I want Internal Affairs here. This is not over. This is retaliation." DeLeon testified that Respondent had his hand on his weapon, a Glock 9 millimeter or some other semiautomatic weapon, at the time, although he did not feel threatened or in danger because of Respondent's posture. When "asked" to present his weapon, Respondent acted in accordance with regulation. DeLeon also directed him to submit his shield and identification card (ID). Although in his '49' concerning the matter, DeLeon stated that Respondent placed his weapon on the table, he testified at trial that Respondent actually handed him the weapon directly.

Because there were two prior instances where Respondent removed his firearm and asked to be placed on modified duty, DeLeon thought that he was going to do it again. DeLeon thought that it was best for Respondent to see a [REDACTED] again. DeLeon called the [REDACTED] Services Section [REDACTED] and PBQS Investigations Unit (PBQSIU) because Respondent was going to be placed on modified assignment.

DeLeon indicated that Respondent left the room and came back. DeLeon, Captain Martin Briffa, Sergeant Michael Childs, Lieutenant Larry Jones and two others were in the room. When DeLeon explained to Respondent that he was being placed on modified assignment, Respondent interrupted him, looked at Childs and said "I want to bring charges against him." He

then told DeLeon, "Fuck you" and "You're a fucking racist. Come outside I got something for you" as he was being escorted outside the office. He later cursed at Sergeant Timothy Dunleavy.

DeLeon testified that because of the insubordination and profanity, the sanction was raised to suspension. DeLeon talked about the matter with his supervisor at PBQS, Deputy Chief Steven Silks.

On cross examination, DeLeon admitted that he received a command discipline (CD) related to the Bronx ticket-fixing scandal for having an "inappropriate conversation" with a Patrolmen's Benevolent Association delegate from the 102 Precinct. DeLeon denied that the conversation involved having a ticket fixed, asserting that he spoke with the delegate "about someone" a friend, DeLeon later admitted -- "who received a summons in the Bronx, and I asked him does he know" the issuing officer "because I wanted to know what kind of police officer was he." "[I]t was told to me that" the summons was "written in error." DeLeon wanted to know if the issuing officer was experienced in writing summonses so that he would know if his friend would win in court.

DeLeon conceded that Respondent had no prior disciplinary issues in the command. He never received as much as a CD, although DeLeon stated that he never in his career had issued a CD to anyone.

DeLeon denied that he said to Respondent, "I've got a big ego and it needs to be fed."

Respondent stated that the actions against him were retaliation for having reported corruption against one of DeLeon's sergeants. Prior to the incident in question, Respondent reported corruption to the Internal Affairs Bureau (IAB) regarding Dunleavy.

During their third encounter, when Respondent insulted DeLeon, the latter felt that the Respondent's shouts of "come out here" meant that he wanted to fight him.

DeLeon agreed that Respondent had an Italian last name but stated that he did not know his ethnic background beyond that. DeLeon agreed that Police Officer Corey Harris, who was black, had about three years on the job when he was assigned to the 102 Precinct anticrime unit. DeLeon did not know whether Harris was the nephew of a deputy inspector. DeLeon indicated that the position given to Harris was not reserved for senior officers.

DeLeon denied telling Sergeant John Dorst a few days after the incident that he was just having a bad day on the day in question.

Captain Martin Briffa

Briffa had been assigned to the Communications Division since August or September of 2012. He previously was assigned to the 102 Precinct as the executive officer. At approximately 1400 hours on November 23, 2011, Briffa was in his office. He saw DeLeon speaking to Alborano in DeLeon's office. Briffa came over too. DeLeon stated that he saw Respondent reading a newspaper when DeLeon came into the station house. Respondent was assigned to "[t]he front desk which is the greeting post" or security desk. His responsibilities were "just to help out anybody who comes in. Usually make copies, reporting. Anything to greet the public, what they need – to service the public." If an "unauthorized person" were attempting to enter the station house, Respondent would have to stop him "and make sure they have authorization." The post was located right after the entrance vestibule, past the entrance doors.

DeLeon said that he was "kind of ticked off about it, it's one of his pet peeves." Alborano apologized and said that he did not know why Respondent was reading the paper. DeLeon said that Respondent saw him "coming in from the side," but instead of putting the paper down, he kept reading the paper. DeLeon said that the supervisors should "bring this guy

in, let's find out what the story is. Let's . . . instruct this kid." Briffa did not know exactly what DeLeon had in mind but it was something "like any officer that gets . . . caught doing something wrong is . . . stop it and don't do it in the future." There was no discussion at that point of changing Respondent's duty status or discipline to be meted out to him.

Alborano brought Respondent into DeLeon's office. DeLeon asked Respondent why he was reading the paper and why he continued to do so after seeing DeLeon. Respondent had no answer and DeLeon did not appreciate this. He wanted an answer. "And at that point" DeLeon "felt like maybe he didn't know who . . . he was so . . . he goes, I'll tell you what, next time I come in, I want you to start addressing me." DeLeon also said that he did not want to see Respondent reading the newspaper like that.

Briffa was asked if there were "any orders by the Command that required members of the service to address the Commanding Officer when he entered." He answered, "Well, a Deputy Inspector or above . . . you're supposed to address that way. . . . [H]e's supposed to do it. Depending on the Commanding – depending on the . . . supervisor, but usually you do."

In response, Briffa testified, Respondent was getting more aggravated. In fact, he was "boiling up." Rather than apologize, he stood at attention. His face was getting a little red and Briffa could see the veins in his neck. Respondent screamed, "[W]hat about my transfer?" Briffa and DeLeon did not know what he was talking about, but DeLeon said that he would look into it.

Briffa later conceded that he had some idea of what Respondent was talking about with regard to a transfer. Six months before the incident, the desk officer at the time, Dorst, had informed Briffa that Respondent placed his firearm on the desk and requested to be placed on

modified duty. Briffa spoke to Respondent and recommended that he be evaluated psychologically.

Respondent said that he was "tired of this shit." Respondent "grabbed he made an arm movement" onto his gun holster. His palm was on the handle of the firearm. This alarmed Briffa because he did not know what was going to happen. Briffa and DeLeon looked at each other and Briffa moved to be within arm's reach of Respondent.

DeLeon "wasn't thrilled" with how the event escalated from "just, a really small instruction" to where Respondent was screaming about a transfer and then grabbing his firearm. DeLeon instructed Respondent to draw and present his firearm. He complied. DeLeon "asked" the officer to "pull out" his shield and ID, and then to step out of the office. He again complied.

The supervisors closed the door and discussed the matter. DeLeon was unsure whether Respondent would be suspended, be placed on modified duty, or have his firearms removed for non-disciplinary reasons. DeLeon conferred with his own supervisor, and they decided that Respondent should be modified. PBQSIU was notified and they responded.

Briffa believed that the next day was a holiday, "probably Thanksgiving." The supervisors felt that between that and the modification, there was a possibility of Respondent [REDACTED] and a [REDACTED] evaluation should be performed. The Medical Division was contacted and the doctor asked that Respondent report there.

The supervisors asked Jones, the integrity control officer (ICO), to report to the scene so that he could escort Respondent to the Medical Division. The supervisors also called Respondent back to let him know that he was being modified and sent for an evaluation.

Briffa testified that Respondent "blew up again." He said that DeLeon was a racist and that he wanted to press criminal charges against him. When DeLeon asked Respondent to

explain himself, he “pretty much said fuck you.” In response, DeLeon told Respondent, “You’re not modified, you’re suspended,” and ordered him out of the office. Out in the hallway, Respondent continued cursing at DeLeon and “wanted for a fight, went outside and just pretty much said, . . . why don’t you . . . put your badge away or some sort of – you think you’re so tough with . . . your badge. . . . Come out here. . . . don’t be a weasel.” DeLeon’s door still was open.

As Jones was taking Respondent to the Medical Division, DeLeon informed the doctor of what had occurred. The doctor stated that Respondent would not be evaluated until the disciplinary case was concluded. DeLeon instructed Jones to return to the command with Respondent.

On cross examination, Briffa agreed that the 102 Precinct station house was a very old building. He indicated that there was a main entrance as well as a side entrance from the parking lot. There were double doors at the main entrance, a vestibule, and another set of double doors. Briffa was unsure if the interior doors had windows because there usually were flyers and such posted on them. When asked if the doors were old, Briffa answered, “I guess.” He did not recall them scraping against the floor, although it was possible they made some sound. Briffa agreed that the side door made a sound when it opened.

Briffa testified that during day tours, the greeting post and the telephone switchboard (TS) usually were two separate posts at the 102 Precinct. He conceded that it was not common practice for the greeting post to call the command to attention when the commanding officer of that command walked in. It only would be necessary when particular personnel from a different command were visiting.

Briffa averred that reading the newspaper was a pet peeve of his as well. He did not know if there was any memorandum informing personnel that they were not to do so. The preferred method of dealing with the issue was to tell supervisors that it was not to happen.

Briffa agreed that Respondent had not been a disciplinary problem at the 102 Precinct. He concurred that DeLeon could have instructed a subordinate to speak to Respondent about the newspaper matter.

When Respondent entered DeLeon's office, he went over to the chairs. Briffa was standing near the door. DeLeon was sitting behind his desk when he instructed Respondent about reading the paper. Briffa and Alborano were moving around.

Briffa acknowledged that Respondent answered affirmatively when DeLeon ordered him to call the station house to attention in the future. DeLeon responded, in sum and substance, "I don't think you know."

Briffa disagreed that he was always within arm's reach of Respondent, but they always were very close. Briffa came closer to Respondent when he put his hand on his gun in order to take action if Respondent pulled out his weapon. Briffa did not have his firearm and did not think that DeLeon did either. Briffa kept his eye on the gun and agreed that he had "tunnel vision" on the weapon. At one point, Briffa agreed, he was within arm's reach of Respondent. Both Respondent and Briffa then moved toward the door.

Briffa contended that he never timed how long it took him to unholster his weapon and shoot it.

Briffa testified that after Respondent left the room, he discussed with DeLeon and Alborano that he observed Respondent's hand on his weapon and what Briffa's intent was with respect to it.

Briffa “probably” stated during his official Department interview that Respondent was suspended for grabbing his weapon. It was more accurate to say that he was suspended for cursing DeLeon, although “I think it’s when you add everything all together.”

Briffa believed that he was in DeLeon’s office the entire time but it was possible he stepped out at some point.

Briffa stated that after the incident, Dunleavy informed him that Respondent had made an allegation of corruption to IAB about Dunleavy. Briffa testified that the reason Respondent had requested to be modified six months before the newspaper incident was that Dunleavy allegedly was ordering him to falsify summonses.

Briffa agreed that Jones was transferred from the 102 Precinct because he was dating a police officer also assigned to the command.

Although Briffa was “very concerned” about Respondent’s wellbeing and the possibility of suicide, it “didn’t cross my mind” how he would be getting home.

Upon examination by the Court, Briffa stated that the dimensions of DeLeon’s office were approximately from the witness stand to the wall on the other side of the judge’s bench, and the wall behind the bench to the outer edge of the reporter’s desk.

Lieutenant Albert Alborano

Alborano was assigned to the 102 Precinct and was the desk officer on the day in question. He testified that DeLeon entered the station house and went into the back area. He came back out and told Alborano to “get rid of the newspapers, he didn’t want them in the command.” Alborano did not see Respondent reading the newspaper.

Sometime later, DeLeon called Alborano on the telephone and instructed him to find Respondent and "send him to the back." Alborano complied, but Respondent returned and told him that DeLeon wanted Alborano to escort Respondent there.

Alborano testified that when Respondent was brought in front of DeLeon to talk about his behavior, he apologized respectfully. DeLeon then told him, "From now on, when I walk in, I want you to call attention for me so that I know that you seen me when I walk in."

Alborano stated that in his practice, he would call attention when a ranking member of the service would enter a command. The proper way to call attention was to "scream out" when the member entered so that everybody stood up and acknowledged him.

Alborano stated that Respondent was very angry and very loud. Respondent said that he was being retaliated against for the IAB complaint against Dunleavy. DeLeon answered that he had no knowledge of that but that Respondent acted correctly by reporting misconduct. It would not, however, facilitate his transfer back to Brooklyn.

Alborano testified that Respondent said "I'm done here." He "put his hand down to his gun, making a gesture that he was done." DeLeon then asked him to draw and present his weapon. Respondent asked DeLeon if he also wanted his shield and ID card, to which DeLeon said yes. Briffa escorted Respondent to get his off-duty firearm and Alborano returned to the desk.

Alborano later saw Respondent yelling. There was "a little commotion" so he and Lieutenant Jason Moran "took him out of the public's eye" and tried to calm him down. At the time, Respondent was coming from DeLeon's office and was yelling at Dunleavy. They took Respondent into the property clerk's office to lighten the situation and calm him down. There, Respondent told Alborano and Moran that he wanted to call IAB on DeLeon. He also

complained that DeLeon selected only minorities to go into special units. The lieutenants notified the Office of Equal Employment Opportunity (OEEO).

On cross examination, Alborano acknowledged that he never had seen anyone at the 102 Precinct call attention to ranking members from that command.

Alborano did not "recall" DeLeon stating "in sum and substance" that he had a big ego which needed to be stroked.

Sergeant Michael Childs

Childs was assigned to PBQSIU. On the date in question, Childs and fellow PBQSIU investigator Sergeant James McCann were summoned to the 102 Precinct by DeLeon because Respondent was being placed on modified assignment. DeLeon explained that Respondent was reading the newspaper while on duty and became irritated when DeLeon spoke to him about it. Respondent then "went for his weapon or something to that effect," leading to DeLeon telling him to draw and present his weapon, as well as his shield, and put them on the desk.

Childs testified that when he arrived, Respondent was brought into a room. DeLeon, Briffa, Childs, McCann and Jones were preparing to take him to [REDACTED]. Childs testified that Respondent said "fuck you" to DeLeon. Childs described Respondent as "very upset" and "fairly loud." Respondent yelled "come out" when he was being escorted out. Based on Respondent's tone, Childs believed that he was challenging DeLeon to some type of altercation. Childs also heard banging sounds, as if Respondent was hitting the wall. Childs advised DeLeon to suspend Respondent, which DeLeon did.

On cross examination, Childs testified that he did not know whether Respondent placed his hand on his weapon as a threat or to hand it to DeLeon. Childs thought that Respondent was

“going to do something,” but he instead was escorted out of the room without resisting. DeLeon even asked Respondent something like, “[W]hat, are you going to hit me?” Respondent did not respond. Childs conceded that Respondent merely might have been challenging DeLeon to come out so that he could continue to curse at him.

Childs testified that he asked Respondent why he wanted to press charges against DeLeon. Childs did not believe it was necessary to call IAB to interview Respondent as to his complaint. Childs added that he could not investigate the matter himself because he was a witness to the incident.

Childs agreed that it was procedure when a member of the service was suspended to remove his shield, ID and firearm.

Sergeant James McCann

McCann was assigned to PBQSIU. He and Childs were called to the 102 Precinct to investigate what had occurred regarding Respondent. Once they arrived, they were told that Respondent was being placed on modified assignment. Their duties were to secure his firearm, shield and ID card, and to assist DeLeon in anything else that he needed.

McCann testified that Respondent wanted to press criminal charges on DeLeon and began using profanities toward DeLeon. McCann recalled Respondent banging on the walls and saying “come out here” in a challenging tone. DeLeon did not claim that he was threatened physically in any way by Respondent.

McCann did not investigate Respondent’s allegations of racism. He noted them in the ‘49’ that was prepared by DeLeon.

On cross examination, McCann agreed that he had no real knowledge of what the banging sound was. It could have been Respondent walking into a copy machine or filing cabinet.

McCann asserted that Respondent was being sent to [REDACTED] because he was unstable mentally. The witness understood that Respondent “unsnaped his firearm, and was going to pull it out and hand it to” DeLeon, which DeLeon believed was abnormal for a police officer.

McCann agreed that because of the arrangement of the officers present during the incident, Respondent was surrounded. Regardless, Respondent was calm until he was told of his modified assignment.

Lieutenant Larry Jones

Jones had been assigned to the Applicant Processing Division (APD) since July 2012. He previously was assigned to the 102 Precinct as the ICO. On November 23, 2011, shortly before 1600 hours, he was called to DeLeon’s office. Briffa and two sergeants from PBQSIU were present. DeLeon told Jones that he was to go to [REDACTED] DeLeon also directed Jones to bring Respondent to DeLeon’s office. When Respondent arrived at DeLeon’s office, he asked DeLeon why he had to see a doctor. DeLeon did not respond.

As Jones and Respondent were leaving the office, Respondent “mentioned” that he wanted to press charges against DeLeon. He did not explain why. When one of the PBQSIU personnel asked what the basis was, Respondent claimed that DeLeon was a racist. He was “a little loud.”

Jones tried to get Respondent to leave the office, and that was when “the profanities began.” Respondent said “fuck you, fuck this place, you’re fucking racist.” He was loud and

upset, and becoming more so. He challenged DeLeon to “come out of the office” after Jones led him away, a couple of feet from the office itself.

Jones escorted Respondent to the locker room so that he could change out of his uniform. They and Respondent’s union representative, Police Officer James Healy, proceeded to the Medical Division. As they were travelling there, Briffa called Jones and instructed him to return to the command. “For disciplinary matters. Psych services doesn’t do interviews” if the member’s duty status was changed. Respondent’s status was changed to suspended.

Jones had not disciplined Respondent before this incident.

Jones asserted that it was a pet peeve of DeLeon “as far as if you’re in the public’s eye, he really didn’t like you reading newspapers or eating food or drinking anything.” There was no set requirement as to whether officers had to call attention when DeLeon entered the command. Some supervisors enforced this rule and some did not. Jones would not call the command to attention if the commanding officer were entering but would stand up.

On cross examination, Jones agreed that the interior front doors of the station house had small windows that often were covered by posters. He claimed not to know whether those or the side doors made a loud noise as they opened.

Respondent went willingly with Jones when leaving DeLeon’s office. Healy drove the vehicle to the Medical Division, with Jones in the front passenger seat and Respondent in the back. There was no back seat partition. Jones did not feel that Respondent’s unrestrained presence presented any danger.

Jones was aware that Respondent had reported Dunleavy to IAB for “corruption.”

Jones agreed that it was inappropriate for a supervisor and subordinate in the same command to date. He admitted that he had a “personal relationship” with an officer while both

were assigned to the 102 Precinct. "A . . . friendly relationship started establishing" and became romantic. He denied that their relationship was one of the reasons he was transferred, although he "guess[ed] it's frowned upon."

On re-direct examination, Jones testified that he requested a transfer to APD for "career enhancement," to obtain more overtime.

On re-cross examination, Jones admitted knowing that Respondent had made a complaint against Dunleavy but asserted that he did not know the content of the complaint.

Respondent's Case

Respondent called Sergeant John Dorst and Sergeant Christopher Green as witnesses. He also testified on his own behalf.

Sergeant John Dorst

Dorst had been assigned to the 102 Precinct for six years. He testified that the station house was old. The front doors creaked and slammed shut after being opened. Dorst believed this would indicate to a member assigned to the security desk that someone was entering, even if he was not looking at the door.

Dorst talked to DeLeon after the incident with Respondent and asked if everything was okay. He contended that DeLeon told him, "I came in to work that day, I was pissed off, and it was just a bad day for me."

Sergeant Christopher Green

Green currently was assigned to the Police Laboratory but previously was assigned to IAB. He investigated Respondent's complaint that he was being retaliated against in the 102 Precinct for reporting Dunleavy's misconduct.

Respondent's Exhibit (RX) B was the letter sent by Green to Respondent. It stated that after an investigation, there was "insufficient evidence to clearly prove the complaint." Green agreed that he presented evidence to his superiors concerning Respondent's case. This included background reports on Respondent and DeLeon, the minor violation and CD logs, and interviews with various personnel. Respondent's previous supervisors did not have a problem with him.

Green testified that he did not find evidence that Respondent was retaliated against. The reason the letter mentioned "insufficient evidence" instead of "no evidence" was that it was a form letter.

To the best of Green's knowledge, while he worked at IAB, no other officer received any discipline for reading the newspaper. Green agreed that although Respondent was castigated for not greeting DeLeon, there was no rule that a formal greeting must be made and no one else was called on it.

There was no indication on DeLeon's '49' that Respondent slammed a weapon on a desk or table.

Respondent

Respondent had been a member of the Department for a little over nine years. He also served three years of active duty in the Army and approximately nine in the Army Reserve. Among his military assignments was service overseas in Korea and Kuwait. He had received

many medals, commendations and awards from both his Department and military careers, see Penalty section, *infra*.

At the time of the incident, Respondent had been assigned to the 102 Precinct for eight or nine months. Almost immediately he began reporting to IAB. In May 2011, he spoke to Sergeant David Gomes from IAB. When asked if he discussed “your complaints of misconduct at the 102,” Respondent answered, “I discussed my treatment at the 102.” Respondent asserted that Gomes asked him if he would accept a transfer to a command in Brooklyn. He answered that he would “appreciate it if you transferred me to the 75 or 77.”

Around November 5, 2011, Respondent reported to IAB that he was “instructed to alter summonses for traffic stop purposes” by Dunleavy and to fill out stop-and-frisk reports at jobs that did not require it. He also was told to write unwarranted C summonses. Respondent objected that overtime was being given to officers in specialized units rather than those assigned to patrol. Finally, Respondent alleged that male supervisors were dating female subordinates and giving them favors.

On the day in question, Respondent was assigned to a foot post during the day tour. After his meal, it started raining so he asked a supervisor, “[W]hat do you want me to do?” The supervisor said that he could cover the security desk. Respondent did so.

Respondent’s duties at the security desk included taking accident reports, taking complaints from the public, writing aided reports and any type of walk-in medical-related issues that people might have. His duties made it impossible to look at the entrance doors at all times. Additionally, because of the posters on the windows, Respondent’s view was blocked and he could not see who was about to enter the command. Nevertheless, the doors were old and

creaked when someone opened them, alerting him when someone came in without having to look.

Respondent claimed that a supervisor told him nothing was going on because it was the day before Thanksgiving. So, after 1400 hours, he began to read the newspaper. At approximately 1425 hours, an hour before the end of tour, DeLeon entered the station house. When asked if he "acknowledge[d]" DeLeon, Respondent admitted that he looked at him and kept reading the newspaper. DeLeon went to the desk but returned shortly after and told Respondent to put the newspaper away. Respondent complied.

"About seven" minutes later, Alborano came up to him and told him to go to DeLeon's office (see RX A, hand-drawn diagram). He complied and said, "Police Officer Fioranelli reporting as ordered, sir." DeLeon instructed him to go to Alborano and have him come as well. Respondent complied.

DeLeon asked Respondent whether he was reading authorized reading material and Respondent admitted that he was not. At some point, Respondent apologized. DeLeon told him that "most people in this job have small egos but I have a big ego." He instructed him that from then on, when Respondent saw him, he was to call the station house to attention.

Respondent never saw anyone call the command to attention during the time he had been assigned there. He told DeLeon that he understood his instructions but DeLeon responded, "I don't think you understand." Respondent asked DeLeon whether his directive was retaliation for his complaint to IAB. DeLeon denied knowing anything about that. Respondent then asked what the status of his transfer was. DeLeon once again answered that he did not know about a transfer.

At this point, Alborano pushed Respondent out of the office. Back at the desk, Respondent told him, "Lieu, go get Internal Affairs right now. I want to be removed from the command." He indicated that he said this loud enough for DeLeon to hear it. DeLeon said, "[T]hat's it, you're done, get back in here." He ordered Respondent to draw and present his firearm, shield and ID card. He complied and left. Alborano instructed him to wait by the desk. Respondent had not touched his firearm or holster prior to that time.

When Respondent saw Briffa enter DeLeon's office, he asked whether he wanted his second firearm from his locker. Briffa agreed, and the two went to the locker room to retrieve it. Respondent reiterated some of his complaints to Briffa. Briffa told him that he would take care of it and smooth things over.

It was almost 1500 hours and Moran had arrived for the third platoon. Respondent told him, "[G]o get Internal Affairs right now." He wanted to be removed from the command "for my safety." Moran told him that PBQSIU was on its way and they would handle it. Respondent nevertheless repeated his demand. He repeatedly made these requests to various supervisors but they ignored him.

Respondent was called back into DeLeon's office. Respondent's delegate, Healy, already had told him that he was being placed on modified assignment and sent to [REDACTED]. No one would tell him why he was being sent to [REDACTED]. Respondent was afraid because [REDACTED] could "throw you in a [REDACTED] depending on what the deputy inspector says to them."

Respondent told Childs and McCann that he wanted to press criminal charges against DeLeon. They ignored him.

When DeLeon told Respondent that he had to report to the Employee Management Division, Respondent told him to "go fuck himself" and "fuck you too." DeLeon told him that

now he was suspended, and still going to [REDACTED]. DeLeon asked Respondent, "[W]hat, you want to hit me?" Respondent denied this but called him a "piece of shit."

On the way out, Respondent called DeLeon a racist. This was because, Respondent claimed, DeLeon "takes care of" Dominican- and African American officers, giving them preferential treatment. He also was "very sweet on" certain female officers.

Respondent admitted that he still was cursing at DeLeon as he walked out. He accidentally walked into the copy machine and knocked the feeding tray onto the ground. It was a narrow corridor.

Respondent was placed in the backseat of a vehicle with Jones and Healy to go to [REDACTED]. Jones then got a phone call from Briffa telling him to return to the station house, however. There, Moran gave him contact information and the assigned investigator's name for OEEO.

Jones and Healy escorted Respondent to the locker room to retrieve his belongings. He asked them for a ride home. He lived near [REDACTED] and took the Long Island Rail Road (LIRR) to work. Jones refused. Respondent asked, "[H]ow am I getting home tonight?" Jones indicated that he should go home the same way he came, but Respondent replied that he was supposed to be picked up that night to go out to dinner. Jones said that Healy could take him to the train station, which Healy did.

Even though Respondent purportedly was suspended, he kept his Department parking permit, LIRR pass and New York City Subway pass, which all stated that he was a police officer. Respondent asserted that the procedure was to remove those items from an officer who was modified or suspended like he was.

Respondent hesitated but answered that he regretted his discourtesy to DeLeon. He did it because he was afraid of having "my civil rights violated and committed to a [REDACTED] like has been done in the past to members of the service."

Respondent denied yelling during the incident. Instead, he claimed, he was "a little loud." He remained calm throughout.

On cross examination, Respondent admitted that he read the newspaper everyday inside the station house. It was not the first time DeLeon, or any other superior officer, entered the station house while Respondent was reading the newspaper but the first time he was told to stop. Respondent did not know of DeLeon's pet peeve on this issue.

Respondent claimed that he did not get upset. He only questioned DeLeon's motives. Respondent denied touching his firearm. He was moving his hands because "Italians like to speak with their hands," so it was "part of my culture." Respondent contended, nonetheless, that he feared for his physical safety during the incident.

Respondent called multiple supervisors to report the incident to IAB but none of them picked up the phone.

Respondent admitted that when he was told about the referral to [REDACTED] no one mentioned hospitalization. He knew that a visit to [REDACTED] might lead to that route, however.

Respondent admitted that he really wanted to press criminal charges against DeLeon and have him arrested. "Yes, it's my God given right. If a crime is committed against me, I'm entitled to file criminal charges against anybody I want."

Respondent admitted that he demanded a ride home. "If people care about me, I would have had a nice ride home safely on a holiday night. I had to go home alone. I don't get it. I don't understand."

On re-direct examination, Respondent added that he never was paid for the two hours he was detained at the station house beyond his tour. He was not advised of any counseling opportunities either.

Upon questioning by the Court, Respondent stated that the criminal charges he contemplated were attempted kidnapping, conspiracy to commit kidnapping, unlawful imprisonment, and harassment. He actually went to the Queens County District Attorney's Office to meet with an assistant district attorney in February 2012. He told her everything that transpired, but when he called back three weeks later, she advised him that IAB would handle the matter and hung up the phone. She would not take his calls after that.

FINDINGS AND ANALYSIS

Respondent is charged with the failure to remain alert and discourtesy toward the supervisor who confronted him about it. Respondent was assigned to the 102 Precinct station house security desk. He was reading a newspaper while doing so. The commanding officer, Armando DeLeon, entered the station house and saw Respondent. Respondent looked up, saw DeLeon, and went back to reading the paper. Respondent complied, however, when DeLeon ordered him to put the paper away.

DeLeon later summoned Respondent to his office. Other supervisors were present. DeLeon instructed Respondent that from now on, when he was assigned to the station house security or telephone switchboard desks, and DeLeon entered the station house, Respondent was to call the command to attention pursuant to Patrol Guide § 203-02 (7), Courtesies, "Order 'Attention' when member above rank of captain enters room unless otherwise directed").

Respondent complained that he was being retaliated against and wanted a transfer. He earlier had made a complaint to IAB about misconduct in the 102 Precinct, everything from fraternization between supervisors and subordinates to being ordered to write improper summonses. DeLeon responded that he did not know anything about that. He felt that Respondent's irate behavior warranted placement on modified duty and told Respondent this. In response, Respondent drew and presented his weapon.

The situation escalated further. In DeLeon's opinion, the way in which Respondent presented his firearm was alarming. He did not seem stable. DeLeon decided that Respondent should be evaluated by the Psychological Services Section. When Respondent learned this, he became even more irate toward DeLeon, saying, in sum and substance, "Fuck you, you piece of shit, you're a racist." He also challenged DeLeon to a physical fight as he was being led forcibly from the office.

The second specification charges Respondent with failing to remain alert while on post because he was reading a newspaper. He conceded reading the paper but asserted that he was not unalert. He could hear the doors to both entrances of the station house because they were old, squeaky, and scraped against the floor. Also, the windows of the doors were papered over with flyers so there was no point in looking at them.

Respondent is not charged, as he seemed to think he was, with the failure to stare with a laser focus at the entrances of the building or to keep his eye gaze exactly parallel to the floor. Even if he looked up when the doors opened, he still was looking down at non-Department business prior to that point and had to look to see what Department business he should be attending to. Cf. *Case Nos. 80214/04 et al.*, p. 16 (Nov. 8, 2006) (fact that TS operator had to look up and "around" from his desk, where he was reading newspaper, to see who was calling

his name established that he was not alert). As such, Respondent is found Guilty of Specification No. 2.

Having pleaded Guilty to Specification No. 1, discourtesy toward DeLeon for the use of profanity, Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent also submitted a package of documents pertaining to penalty. These included various medals, commendations and awards from both his Department and military careers.

Respondent has been found Guilty of failing to remain alert and discourtesy. He was reading a newspaper while assigned to the station house security post. When his commanding officer called him on this, Respondent cursed at him repeatedly and challenged him to a fight.

The Department has argued that Respondent should be dismissed from employment as a police officer. The Department agreed that termination for discourtesy is not supported by precedent. That is at least true when, as here, there are no false statements, see, e.g., Case Nos. 75616/00 et al. (Nov. 16, 2000) or criminal conduct, see, e.g., Case Nos. 76729/01 et al. (Oct. 15, 2004). The Department suggested, as an aggravating factor, that the profanity was directed toward not just any supervisor but Respondent's commanding officer. The Court does not see why this factor makes the profanity so much worse than cursing at a line supervisor you work with every day. In fact, the latter might be worse because of its more direct impact on the

supervisor-subordinate relationship. In any event, there concededly is no precedent to support the Department's argument on this point.

Respondent asserted that his misconduct was mitigated by the conduct of the supervisors. He claimed that they were retaliating against him for reporting various forms of misconduct that were occurring in the 102 Precinct. He also contended that he was being treated unfairly when DeLeon ordered him to call the station house to attention when DeLeon walked in the room, a directive to which no other members were subject. Finally, Respondent claimed that when he learned he was going to be evaluated by [REDACTED], he became fearful that he would be involuntarily committed to a [REDACTED] and in response lashed out profanely.

Respondent's argument about retaliation is speculative. The only supervisor present that expressly acknowledged knowing about Respondent's reports of corruption to IAB at the moment of the confrontation with DeLeon was Jones, the integrity control officer, and that should not be altogether surprising. Especially speculative is Respondent's contention that DeLeon's denial of knowledge concerning the state of Respondent's transfer request showed retaliation. It was not disputed that IAB offered Respondent a transfer out of the 102 Precinct, which he accepted. DeLeon was pretty sure that he signed the transfer request but did not know where it was in the process. There is no evidence, therefore, that anyone, much less DeLeon, was holding up the transfer in retaliation for Respondent's complaints.

In one sense, DeLeon agreed that he was singling out Respondent by ordering him to call the command to attention. He stated, however, that his reason for doing so was not to punish Respondent but to respond to Respondent's actions toward him. If he wanted to punish Respondent, he could have placed him in the minor violations log or issued a command discipline. In any event, it was undisputed that Respondent looked up from his newspaper, saw

DeLeon, put his head back down and kept reading the paper. This was a stunningly contemptuous thing to do. DeLeon was justified in instructing Respondent that he needed to show a modicum of respect.

Respondent suggested that the PSS evaluation was a pretext for involuntarily committing him to a mental hospital. This too was based on rank speculation that what allegedly happened to another officer who complained about misconduct would happen to him. In any event, that fear would not justify calling his commanding officer a racist, telling him to “go fuck yourself,” and challenging him to a fight. In fact, nothing justified Respondent’s profanity toward DeLeon.

In sum, the alleged retaliation and Respondent’s fears of being institutionalized are not a defense to nor a mitigation of the misconduct. He could have made a complaint to IAB about retaliation at any other time besides when he was standing in DeLeon’s office. *See Case Nos. 2010-0509 et al.*, p. 96 (Mar. 21, 2013) (“Respondent’s claims of discrimination are not a defense nor do they mitigate the conduct. Respondent had ample avenues for redress of any grievance he may have had.”). In fact, IAB duly investigated his report of retaliation (see RX B, closing letter from investigator to Respondent).

Several parts of the incident were mentioned at trial but were not themselves charged as acts of discourtesy. The supervisors testified that when Respondent complained that DeLeon’s instruction to call other officers to attention was retaliation, he said that he was “done” and placed his hand on his firearm. Because, in the past, Respondent had asked to be placed on modified assignment and at the same time turned over his weapon, the supervisors believed that the same thing was occurring again. Respondent contended that this allegation was false, ginned up to create grounds for termination in a case that otherwise did not call for it. The Department, however, disclaimed reliance on this factor as a reason for an increased penalty. In any event,

there is no allegation, even in the bill of particulars, that Respondent engaged in conduct with the gun that was overtly threatening toward any specific supervisor or that constituted misconduct independently. At most, his action caused them concern about his mental state because he had turned in his weapons on previous occasions and asked to be modified. That is odd behavior for a police officer. But in this sense, the conduct was unrelated to the discourtesy.

Furthermore, there is no evidence that the supervisors committed perjury when testifying that Respondent's hand was on the firearm. Thus, the Court rejects Respondent's application to make a referral to IAB in this regard. Respondent is free to make a referral of his own if he feels otherwise.

Also uncharged, but evident throughout the recitation of the testimony and at the trial itself, was Respondent's angry and insubordinate demeanor in general. Respondent complains loudly about others being discourteous to him but fails to see that he is discourteous to others. This showed itself in everything from the smirking way he answered questions on cross examination to hesitating before agreeing that he regretted cursing at DeLeon.

The whole episode began when Respondent was on a foot post and it started raining. He requested a post change, which was granted, yet once inside and out of the rain Respondent sat at a desk and read the newspaper. His behavior upon seeing his commanding officer walk through the door was to go back to reading the newspaper. When confronted about this conduct, Respondent ordered supervisors to call IAB and said that he wanted criminal charges brought against DeLeon. He demanded a ride home to [REDACTED], and when that was denied, to a train station. The 102 Precinct station house is approximately four blocks away from a subway station that itself is one stop away from the Jamaica Long Island Rail Road station.

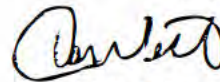
There were other troublesome aspects of Respondent's testimony. One might think that after the holiday weekend and having some time to cool off, he would have calmed down and realized that he acted rashly. Instead, he arranged a meeting with an assistant district attorney and told her that he wanted DeLeon charged with everything from harassment to conspiracy to commit kidnapping and attempted kidnapping. When she investigated and told Respondent that IAB would handle his assertions, he continued to harangue her. He sounded genuinely shocked at trial when he testified that she stopped returning his calls.

All of this behavior is unusual, and it may or may not speak to his mental state, but it does not support termination in that it is not charged as misconduct. On the other hand, dismissal probation is more than appropriate in light of his actions. Moreover, as the Confidential Memorandum below details, this is not Respondent's first set of charges and specifications involving the display of violent emotions when confronted with police situations with which he disagrees. The idea of progressive discipline indicates that continued misconduct of much the same nature as before should be met with a greater penalty; Respondent forfeited 45 vacation days in the previous matter.

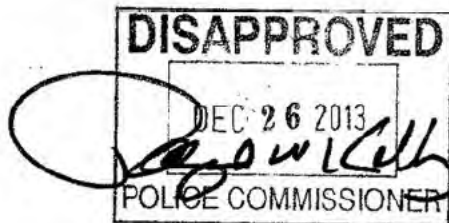
Accordingly, the Court recommends that Respondent be *DISMISSED* from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent forfeit the 30 days he previously served on suspension plus an additional 30 vacation days. See Case No. 84773/08 (Oct. 15, 2010) (officer forfeited 10 vacation days and 30 suspension days, and was placed on dismissal probation, for calling sergeant "fucking asshole" and "fucking piece of shit," when sergeant told

the officer she could be suspended, she replied, "Go ahead. Do it. I could use the vacation."); *Case No. 73924/98 et al.*, pp. 25, 31 (Sept. 21, 2000) (45 suspension days to be served and probation for telling sergeant, "You want me to sit here and wait while you tell me how to do my fucking job" and "Good fucking riddance" when they parted ways, and calling another supervisor an idiot), confirmed sub nom. Matter of Breland v. Kerik, 293 A.D.2d 415 (1st Dept. 2002).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials




POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PHILIP FIORANELLI
TAX REGISTRY NO. 934865
DISCIPLINARY CASE NO. 2011-6356

In 2012, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 4.0 "Highly Competent" in 2009 and 2010. He has been awarded 26 medals for Excellent Police Duty and 4 for Meritorious Police Duty. [REDACTED]

Respondent has been the subject of one prior adjudication. In 2012, he forfeited 45 vacation days after trial for engaging in an on-duty physical altercation with his partner, failing to report the altercation, and withholding information when interviewed about the incident.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials